

Notice of Allowability	Application No.	Applicant(s)	
	10/510,680	PRAT QUINONES ET AL.	
	Examiner	Art Unit	
	Yong Chu	1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/27/2006.
2. ☒ The allowed claim(s) is/are 1-10, 12-20, 23, 24 and 26.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>5/25/2005</u> 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____. |
|---|---|

DETAILED ACTION

Claims 11, 21, 22, 25, 30, and 31 have been canceled by the Amendment filed on 27 July 2006. Claims 1, 6-9, 18-20, and 23-24 have been amended by Amendment filed on 27 July 2006. Therefore, claims 1-10, 12-20, 23-24, 26, and 32-34 are pending in this application.

Response to Amendment

The Amendments by Applicants' representative Anthony C. Tridico dated on 27 July 2006 has been entered.

IDS

The foreign patent document WO 01/04118 as cited in the information Disclosure Statement submitted in 25 May 2005 has been considered. Please refer to Applicant's copies of the PTO-1449 submitted herewith.

Rejection over claims 1-4,10,14,26 and 32-34 under 35 U.S.C. §102(e)

The earliest effective prior art date for Mehta et al. is 23 December 2002. The current application was filed on 11 April 2003, but claimed priority to Spanish Patent Application No. 200200889 filed on 16 April 2002. The Applicants has submitted a certified English translation of the Spanish language foreign priority document, which overcomes the prior art date. The amended claims are supported in the priority document. Therefore, the rejection over claims 1-4, 10, 14, 26, and 32-34 is withdrawn.

Rejection under 35 U.S.C. §112, second paragraph

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Applicant's argument filed on 27 July 2006 on the indefiniteness of claims 1-10, 12-20, 23-24, 26 and 32-34 due to improper use of proviso has been fully considered and found persuasive. The rejection over claims is withdrawn.

Applicant's argument over rejection of claim 32 on the grounds that the phrase "a compound effective in the treatment of a respiratory,.." is found not persuasive. Claim 32 is rejected as a composition comprising a compound as claimed in claim 1; and a compound effective in the treatment of respiratory, urological or gastrointestinal disease or disorder as indefiniteness. The specification does not define what kind of compounds may have these kind of claimed proprieties. Some of the compounds which are effective in the treatment of respiratory, urological or gastrointestinal disease or disorder may be found after the filing of this instant application. Therefore, the rejection over claim 32 is maintained. Applicants have agreed to cancel claim 32.

Applicant's argument over rejection of claim 33 on the grounds that the phrase "at least one compound chosen from: β 2 agonist, antiallergic drug, .." is found not persuasive. The argument on the grounds that the compound such as β 2 agonist can be found on MedicineNet.com and one of ordinary skill in the art would understand what β 2 agonist means. However, there are many compounds can be β 2 agonist, one of ordinary skill in the art may not know the definition of all compounds which are β 2 agonist. The specification fails to teach the definition of these compounds. In addition, some of the β 2 agonists compounds may be found after the filing of the instant application. Applicants have agreed to amend the claim 33 to include steroid as the additional effective ingredient in the claimed composition. The rejection is maintained.

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Applicant's argument over rejection of claim 34 on the grounds that the term "admixture" is defined as a mixture is found persuasive. The rejection over claim 34 is withdrawn. However, claim 34 is a duplicate of claim 26. Applicants have agreed to cancel claim 34.

Examiner's amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended with authorization from Applicants representative Anthony C. Tridico on 25 September 2006 as follows:

Delete claims 32 and 34 of the Amendment filed on 27 July 2006.

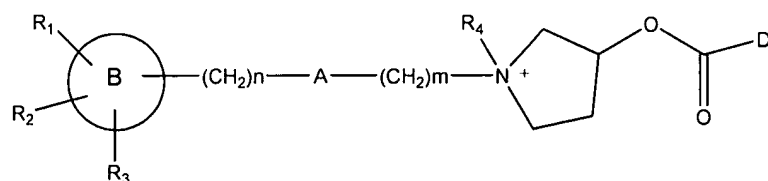
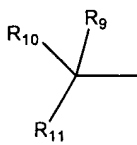
In claim 1, line 9 page 4 of the Amendment filed on 27 July 2006, insert -- and -- after " branched optionally substituted lower alkyl groups;".

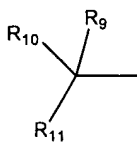
In claim 33, delete line 3 and line 4 " (ii) at least one compound chosen from: .. (LTD4) antagonist.", and insert -- (ii) at least one compound chosen from steroid.--.

Reasons for Allowance

The present invention is directed to a compound of the formula (I)

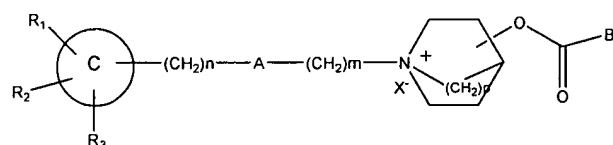
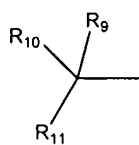
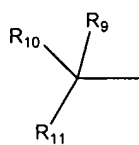
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, wherein **A** is $-\text{O}-$, $-\text{S}-$, $-\text{S}(\text{O})-$, or $-\text{S}(\text{O})_2-$; **m** is an integer from 0 to 8; **n** is an integer from 0 to 4; **R**⁴ is a lower alkyl; **B** is

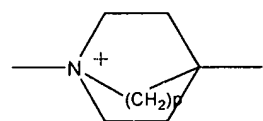
phenyl, naphthalenyl,...; and **D** is , wherein **R**⁹ is phenyl, 2-furyl, 3-furyl, 2-thienyl or, 3-thienyl; and **R**¹⁰ is phenyl, 2-furyl, 3-furyl, 2-thienyl, 3-thienyl, or C₃-C₇ cycloalkyl.

The closest prior art of record is WO 01/04118 (Fernandez Forner et al.).

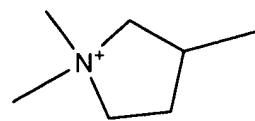
Fernandez Forner et al. disclose a compound of formula

, wherein **A** is $-\text{O}-$, $-\text{S}-$, $-\text{S}(\text{O})-$, or $-\text{S}(\text{O})_2-$; **m**is an integer from 0 to 8; **n** is an integer from 0 to 4; **C** is phenyl, naphthalenyl,...; and **B**is , wherein **R**⁹ is phenyl, 2-furyl, 3-furyl, 2-thienyl or, 3-thienyl; and **R**¹⁰ isphenyl, 2-furyl, 3-furyl, 2-thienyl, 3-thienyl, or C₃-C₇ cycloalkyl. The prior art compounds

is patentably distinct from the instantly claimed compounds, wherein quinuclidine



(prior art) is different from pyrrolidinium



(instantly

claimed compound) as part of the core structure.

Therefore, claims 1-10, 12-20, 23-24, and 26 are allowed.

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Telephone Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Chu whose telephone number is 571-272-5759.

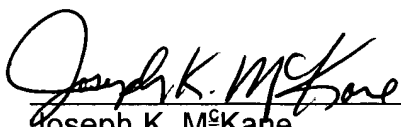
The examiner can normally be reached on 7:00 am - 3:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Joseph K. McKane
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